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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ABS-CBN Broadcasting Corporation Retirement Fund, ACD, Inc., Employees' Retirement Fund, Aircon & Refrigeration Ind., Inc. Retirement Fund, Allegro Microsystems Phils., Inc. Retirement Fund, Avon Products Manufacturing Inc. Retirement Fund, Banque Nationale de Paris, Manila Retirement Fund, Boehringer Mannheim Phils., Inc. Retirement Fund, Calumpit Institute, Inc. Retirement Fund, Catholic Educational Association of the Phils., Retirement Fund, Colgate-Palmolive Phils., Inc. Retirement Fund, Engineering and Construction Corp. of Asia, Retirement Fund, F.E. Zuellig Group of Companies Retirement Fund, First Brands Phils., Inc. Retirement Fund, Interphil Laboratories, Inc. Retirement Fund, Knights of Columbus Fraternal Association of the Phils., Inc. Retirement Fund, MOF Company Retirement Fund, Manila Hotel, Inc. Retirement Fund, Mapua Institute of Technology Retirement Fund, Marsman and Company, Inc. Retirement Fund, Metro Kidapawan Water District Retirement Fund, National Steel Corporation Retirement Fund, Oriental Tin Can & Metal Sheet Manufacturing & General Metal Container Corp. of the Phils. Multi-Employer Retirement Fund, PCI Automation Center, Inc. - Gratuity Fund, PCI Automation Center, Inc. - Provident Fund, PCIBank - Gratuity Fund, PCIBank - Provident Fund, PCI Leasing and Finance Inc. Retirement Fund, PMI Colleges - Bohol Retirement Fund, PMI Colleges - Manila Retirement Fund, Phil.

Business For Social Progress Retirement Fund, Phil. Commercial Credit Card, Inc. Retirement Fund, Philippine Electric Corp. Retirement Fund, Phil. Phosphate Fertilizer Corp. Retirement Fund, Phil. Institute of Certified Public Accountants (PICPA) Retirement Fund, Philippine Pyrite Corporation Retirement Fund, Philippine Racing Club, Inc. Retirement Fund, Rustan Commercial Corp. Retirement Fund, Superior Gas and Equipment Company, Inc. Retirement Fund, Union Carbide Philippines (Far East), Inc. Retirement Fund, Wirerope Corporation of the Phils. Retirement Fund, The Zuellig Group of Companies Retirement Fund, Eastern Telecommunications Phils., Inc. Employees' Retirement Plan, Oceanic Wireless Network Phils., Inc. Employees' Retirement Plan, all represented by their Trustee, THE PHILIPPINE COMMERCIAL INTERNATIONAL BANK (PCIB),
Petitioners,

- versus -

C.T.A. CASE NO. 4857

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 24 1997

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DECISION

This is a petition for review filed by the various employees' trusts, herein represented by their trustee, Philippine Commercial International Bank (PCIB), against the respondent, Commissioner of Internal Revenue, for the refund of P3,685,770.56, representing erroneously withheld twenty percent (20%) final tax on interest income earned from investments in treasury bills, bonds, deposits and deposit substitutes.

The facts are as follows:

On various dates, from the period January, 1989 to April, 1992, PCIB, as trustee, invested the funds of the trusts in treasury bills, money market placements and savings deposits. These investments earned interest income from which the twenty percent (20%) final withholding tax was imposed pursuant to Presidential Decree No. 1959, effective October 15, 1984.

PCIB, as representative of the employees' trusts, filed several claims for refund in behalf of said trusts. The dates of filing are enumerated in paragraph VI of the petition for review (pp. 11-14, CTA records). These were not acted upon by the respondent. Hence, the instant petition for review filed on October 8, 1992.

Petitioners contended that the Supreme Court *En Banc* in the case of **Commissioner of Internal Revenue vs. The Hon. Court of Appeals, The Court of Tax Appeals,** GCL Retirement **Plan, represented by its Trustee-Director, G.R.** No. 95022, **March 23, 1992 (207 SCRA 487)**, has ruled on the exemption of the employees' trusts from the income tax. While respondent does not dispute this ruling, she, however, argued:

1. That when Presidential Decree No. 1959 was promulgated on October 15, 1984, the employees' trusts ceased to be exempt from final withholding tax on interest from bank deposits and/or deposit substitutes. This is because Presidential Decree No. 1959 has deleted the proviso on exemption and preferential tax treatment under Sec. 21(d) and Sec. 24(cc) of the 1984 Tax Code;

2. That the petitioners have not shown that the tax sought to be refunded was actually withheld and remitted to the respondent; and

3. That petitioners failed to establish that the funds used in the purchase of treasury bills were derived from the retirement funds.

For the proper adjudication of the case at bar, the following issues have to be resolved by this Court, to wit:

I. WHETHER OR NOT THE INTEREST INCOME OF THE EMPLOYEES' TRUST, REPRESENTED HEREIN BY PCIB, IS SUBJECT TO THE TWENTY PERCENT (20%) FINAL WITHHOLDING TAX IMPOSED UNDER PRES. DECREE NO. 1959;

II. WHETHER OR NOT PCIB WAS ABLE TO ESTABLISH/PROVE THAT THE INVESTMENTS MADE WERE FOR THE ACCOUNT OF THE EMPLOYEES' TRUST; and

III. WHETHER OR NOT PETITIONERS WERE ABLE TO PROVE THAT THE TAX SUBJECT OF THEIR CLAIMS FOR REFUND WAS ACTUALLY WITHHELD AND REMITTED TO THE RESPONDENT.

With respect to the first issue, this has been settled by the Supreme Court in the case of Commissioner of Internal **Revenue vs. Court of Appeals, The Court of Tax Appeals, GCL Retirement Plan**, *supra*, pertinent portion of which is quoted hereunder:

> "The deletion in Pres. Decree No. 1959 of the provisos regarding tax exemption and preferential tax rates under the old law, therefore, can not be deemed to extend to employees' trusts. Said Decree, being a general law, cannot repeal by implication a specific provision, Section 56(b) (now 53[b]) in relation to Rep. Act 4917 granting exemption from income tax to employees' trusts. Rep. Act 1983, which excepted employees' trusts in its Section 56(b) was effective on 22 June 1957 while Rep. Act No. 4917 was enacted on 17 June 1967, long before the issuance of Pres. Decree No. 1959 on 15 October 1984. A subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose is so manifested. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act (Villegas v. Subido, G.R. No. L-31711, 30 September 1971, 41 SCRA 190).
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> xxx xxx xxx
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> There can be no denying either that the final withholding tax is collected from *income* in respect of which employees' trusts are declared exempt (Sec. 56[b], now 53[b], Tax Code). The application of the withholdings system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the

> collection of *income* taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.
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> Petitioner also relies on Revenue Memorandum Circular 31-84, dated 30 October 1984, and Bureau of Internal Revenue Rule No. 027-e-000-00-005-85, dated 14 January 1985, as authorities for the argument that Pres. Decree No. 1959 withdrew the exemption of employees' trusts from the withholding of the final tax on interest income. Said Circular and Ruling pronounced that the deletion of the exempting and preferential tax treatment provisions by Pres. Decree No, 1959 is a clear manifestation that the single 15% tax rate is imposable on all interest income regardless of the tax status or character of the recipient thereof. But since we herein rule that Presidential Decree No. 1959 did not have the effect of revoking the tax exemption enjoyed by employees' trusts, reliance on these authorities is now misplaced."

The second and third issues are interrelated and involves both a question of fact. A joint discussion will thus prove to be facile.

Petitioners are claiming for refund of the total amount of P3,665,770.56 itemized hereunder:

Treasury bills	P3,559,993.52
Money market placement	54,433.84
Savings deposits	71,343.20
TOTAL	P3,685,770.56

PCIB purchased treasury and Central Bank bills in bulk from the Bangko Sentral ng Pilipinas (BSP) during the years 1989, 1990 and 1991. From these purchases the BSP withheld the 20% final tax (Exhs. D, E, E-1 to E-4, inclusive). All final taxes withheld at source from discounts on taxable government securities for the years mentioned were remitted to the Treasurer of the Philippines for the account of the Bureau of Internal Revenue (Exhs. P, F-1 and F-2).

An Audit Report prepared by Punongbayan and Araullo, CPAs (Exh. C) with Annexes from 1-5 (pp. 258-661, CTA rec.) would show that the Trust Services Group of PCIB purchased treasury and Central Bank bills from the BSP and other commercial banks for the account of the following employees' trust, where the corresponding 20% final tax have been withheld and remitted to the BIR (see Attachment 1 of Exh. C, pp. 256-257, CTA rec.).

The provisions of the Tax Code pertinent to the case at bar are Sections 51(a) and 230, which provide as follows:

> **Sec. 51.** ***Returns and payment of taxes withheld at source.*** - (a) Quarterly returns and payment of taxes withheld. - Taxes deducted and withheld under Section fifty-three (now 50) shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city, or municipality where the withholding agent has his legal residence or principal place of business or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Secretary of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent

> intervals when necessary to protect the interest of the Government. The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.
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> **Sec. 230.** ***Recovery of tax erroneously or illegally collected.*** **-** No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.
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> *Forfeiture of refund.* - A refund check or warrant issued in accordance with the pertinent provisions of this Code which shall remain unclaimed or uncashed within five (5) years from the date the said warrant or check was mailed or delivered shall be forfeited in favor of the government and the amount thereof shall revert to the General Fund.

Based on our findings, we have disregarded the amounts withheld and paid prior to October 9, 1990. The petition was filed on October 8, 1992 and 1992 was a leap year, the two-year prescription period for the claims for a refund should therefore be counted from October 9, 1990. Thus, all claims for refund of final withholding taxes paid prior to October 9, 1992 have prescribed.

Furthermore, the petitioners did not submit any evidence to substantiate their claims for refund of taxes withheld on interest income from money placements (P54,433.84) and savings deposits (P71,343.20), neither did the audit report provide for such finding. Hence, the same are excluded from the Court's computation. In view thereof, the Court has computed the refund to be awarded in favor of petitioners the following amounts:

PCIBank Trust Department
Summary of Differences in Final
Withholding Taxes on Treasury Bills
For the Period January 1989 to April 1992

Name of Retirement Fund	Per Audit	Per Court's Findings
1. ABS-CBN Broadcasting Corp.	P 17,641.95	P 17,641.95
2. ACD, Inc.	2,432.87	2,432.87
3. Allegro Microsystems Phils., Inc.	34,878.19	34,878.19
4. Avon Products Mfg., Inc.	71,636.91	38,684.36
5. Banque National de Paris	30,817.56	30,817.56
6. Boehringer Mannheim Phils., Inc.	9,339.63	9,339.63
7. Calumpit Institute, Inc.	3,853.17	2,040.76
8. Colgate-Palmolive Phils., Inc.	118,473.83	79,853.90
9. Engineering & Construction Corp. of Asia	34,668.89	18,882.49
10. F.E. Zuellig Group of Companies	94,533.27	82,970.94
11. First Brands Phils., Inc.	28,469.00	28,469.00
12. Interphil Laboratories, Inc.	75,441.91	60,644.71
13. Knights of Columbus Fraternal Assn.	21,346.84	9,375.85

14. Metro Kidapawan Water District	17,238.58	15,205.92
15. M O F Company	8,756.37	8,756.37
16. National Steel Corporation	372,113.12	213,088.87
17. Oriental Tin Can	14,015.33	9,375.38
18. PCI Automation Center, Inc. - Gratuity	12,455.12	12,455.12
19. PCI Automation Center, Inc. - Provident	4,154.07	4,154.07
20. PCIBank - Gratuity	1,106,243.03	857,376.48
21. PCIBank - Provident	566,981.87	-
22. PMI Colleges - Bohol	7,356.77	7,356.77
23. PMI Colleges - Manila	20,837.02	18,289.81
24. Philippine Business for Social Progress	4,786.90	4,786.90
25. Phil. Commercial Credit Card, Inc.	12,997.27	12,363.26
26. Philippine Electric Corporation	48,439.18	48,439.18
27. Philippine Phosphate Fertilizer Corp.	21,758.74	21,758.74
28. Philippine Institute of CPAs	16,419.05	16,419.05
29. Philippine Pyrite Corporation	6,343.28	6,343.28
30. Rustan Commercial Corporation	44,295.32	44,295.32
31. Superior Gas & Equipment Co., Inc.	7,111.29	5,339.58
32. Union Carbide Phils.	6,362.05	6,362.05
33. Wirerope Corporation of the Philippines	15,271.79	15,271.79
34. The Zuellig Group of Companies	27,704.79	24,939.93
35. Eastern Telecommunications, Inc.	1,378.90	1,378.90
	P2,886,559.86	P1,769,788.98

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED to REFUND** in favor of petitioners the specific amounts above-enumerated or a total of P1,769,788.98, representing erroneously withheld 20% final tax on the income earned by the various trust funds from the purchase of treasury and Central Bank bills by their trustee, herein represented by PCIB. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals